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No. 02-9065

Supreme Court, U.S.
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In The
Supreme Court of the United States

SHAKUR MUHAMMAD, aka John E. Mease,

Petitioner,

v.

MARK CLOSE,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

CORINNE BECKWITH
(Counsel of Record)
633 Indiana Avenue, N.W.
Washington, DC 20004
(202) 824-2341
Counsel for Petitioner

MIKE COX
Attorney General
THOMAS L. CASEY
Solicitor General
(Counsel of Record)
P. O. Box 30212
Lansing, MI 48909
(517) 373-1124
LEO H. FRIEDMAN
LINDA OLIVIERI
KEVIN HIMEBAUGH
Assistant Attorneys General
Counsel for Respondent

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to Respondent's Brief in Opposition to Petition for Writ of Certiorari at the following pages:

Magistrate Judge's Report and Recommendation, *Muhammad v. Close*, Case No. 98-CV-10153, U.S. District Court for the Eastern District of Michigan (November 23, 1998) 1a-35a

Order Adopting Report and Recommendation, *Muhammad v. Close*, Case No. 98-CV-10153, U.S. District Court for the Eastern District of Michigan (March 26, 1999) 36a-46a

Magistrate Judge's Report and Recommendation, *Muhammad v. Close*, Case No. 98-CV-10153, U.S. District Court for the Eastern District of Michigan (August 15, 2001) 47a-64a

Order Adopting Report and Recommendation, *Muhammad v. Close*, Case No. 98-CV-10153, U.S. District Court for the Eastern District of Michigan (December 17, 2001)..... 65a-70a

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United States District Court
Eastern District of Michigan (Bay City)
Case No. 98-CV-10153

Muhammad v. Close

June 2, 1998	Complaint
June 23, 1998	Order by Judge Robert H. Cleland referring case to Magistrate Judge Charles E. Binder for a report and recommendation
July 28, 1998	Motion by plaintiff Shakur Muhammad for appointment of attorney
July 31, 1998	Motion by defendant Mark Close to dismiss, and for summary judgment
August 12, 1998	Order by Magistrate Judge Binder denying motion for appointment of attorney by Shakur Muhammad
September 16, 1998	Motion by plaintiff Shakur Muhammad to amend complaint, and response by plaintiff Shakur Muhammad to defendant Mark Close's motion to dismiss
November 24, 1998	Report and Recommendation by Magistrate Judge Charles E. Binder that motion to amend complaint by Shakur Muhammad be granted, and motion to dismiss and motion for summary judgment by Mark Close be denied
March 26, 1999	Order by Judge Robert H. Cleland accepting Report and Recommendation, granting Shakur Muhammad's motion to amend complaint and denying Mark Close's motion to

	dismiss and motion for summary judgment
April 2, 1999	Motion by plaintiff Shakur Muhammad for reconsideration of motion for appointment of attorney
April 7, 1999	Amended Complaint
October 19, 1999	Order by Magistrate Judge Charles E. Binder granting motion for reconsideration of motion for appointment of attorney, and order appointing attorney Wendy Kanar as pro bono representation of plaintiff
May 31, 2000	Notice by plaintiff Shakur Muhammad of taking of deposition of Steven D. Bellows, Joseph Chudznski, Mark Close, Kelly J. Goheen, Richard A. Metevia, Arvid Perrin, and Walter J. Tipton, Jr., on June 7, 2000
June 28, 2000	Amended notice by defendant Mark Close of taking deposition of plaintiff Shakur Muhammad on July 11, 2000
July 3, 2000	Notice by defendant Mark Close of taking deposition of Lorenzo Jones and Devond D. Screw on July 12, 2000
July 14, 2000	Notice by defendant Mark Close of taking deposition of Zebadiah Mendel Holland on July 11, 2000
August 3, 2000	Motion by defendant Mark Close to dismiss complaint

August 28, 2000	Response by plaintiff Shakur Muhammad to motion to dismiss complaint
September 5, 2000	Reply by defendant Mark Close to response to motion to dismiss complaint
November 2, 2000	Report and recommendation by Magistrate Judge Binder that motion to dismiss complaint be denied
November 9, 2000	Objections to Report and Recommendation by defendant Mark Close
November 14, 2000	Response by plaintiff Shakur Muhammad to defendant's objections
January 12, 2001	Order by Judge David M. Lawson adopting Report and Recommendation and denying defendant's motion to dismiss complaint
February 6, 2001	Motion by defendant Mark Close for summary judgment
March 12, 2001	Response by plaintiff Shakur Muhammad to defendant's motion for summary judgment
March 15, 2001	Reply by defendant Mark Close to plaintiff's response to defendant's motion for summary judgment
August 18, 2001	Report and Recommendation by Magistrate Judge Binder that defendant's motion for summary judgment be granted
August 29, 2001	Motion by plaintiff Shakur Muhammad to extend time to file objections

	to Magistrate's Report and Recommendation
November 5, 2001	Request by plaintiff Shakur Muhammad to extend time to file objections to Report and Recommendation
November 9, 2001	Order by Judge David M. Lawson granting plaintiff Shakur Muhammad's motion to extend time to file objections to Magistrate's Report and Recommendation
November 13, 2001	Motion to withdraw by Wendy Davis Kanar as attorney for Shakur Muhammad
November 20, 2001	Order by Judge David M. Lawson denying Wendy Davis Kanar's motion to withdraw as attorney for Shakur Muhammad
November 29, 2001	Objections by Shakur Muhammad to Report and Recommendation
December 7, 2001	Response by defendant Mark Close to plaintiff's objections
December 17, 2001	Memorandum opinion and order by Judge David M. Lawson accepting Report and Recommendation and granting defendant's motion for summary judgment
December 17, 2001	Judgment for defendant entered by Judge David M. Lawson
January 2, 2002	Plaintiff Shakur Muhammad's notice of appeal to U.S. Court of Appeals

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United States Court of Appeals for the Sixth Circuit
Docket No. 02-1043

Muhammad v. Close

January 8, 2002	Prisoner Case Docketed
January 31, 2002	Brief filed by Shakur Muhammad for Appellant Shakur Muhammad
March 7, 2002	Brief filed by Kevin R. Himebaugh for Appellee Mark Close
March 7, 2002	Request to waive oral argument and submit case on the briefs filed by Kevin R. Himebaugh for Appellee Mark Close
March 22, 2002	Pro Se Reply Brief filed by Shakur Muhammad for Appellant Shakur Muhammad
September 23, 2002	Order filed: Affirmed in unpublished decision
September 30, 2002	Petition for rehearing before original panel filed by Appellant Shakur Muhammad
November 14, 2002	Order filed denying petition for rehearing before original panel
November 22, 2002	Mandate issued with costs of $566.25 to be recovered by Appellee

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

NORTHERN DIVISION

SHAKUR MUHAMMAD, (#213302), a/k/a JOHN MEASE,

Plaintiff,

vs.

MARK CLOSE,

Defendant.

FILE NO. 98 cv 10153 BC
HON. VICTORIA A. ROBERTS
MAG. CHARLES BINDER

The following Policy Directive was attached to a pleading filed in the above court.

MICHIGAN DEPARTMENT OF CORRECTIONS **POLICY DIRECTIVE**	EFFECTIVE DATE 6-6-94	NUMBER 03.03.105
	SUPERSEDES PD-DWA-60.01 (3-12-90) DOM 1994-27	
	AUTHORITY MCLA 24.207(k); 791.203; 791.206; 791.251 *et seq.*; and 800.33 Administrative Rules 791.3301-.3320; 791.5501-.5513	
SUBJECT PRISONER DISCIPLINE		
	ACA STANDARDS 3-4214 through 3-4236	

I. POLICY STATEMENT — Disciplinary sanctions shall be imposed against prisoners for rule violations in accordance with due process requirements.

II. POLICY: GENERAL INFORMATION

A. Alleged violations of written rules are classified as "major misconduct" or "minor misconduct" and are further defined on attachments A, B and C of this policy. Misconduct reports may be written only for the violations which are on these attachments.

B. The structure of the disciplinary process is one of progressive sanctions. The least drastic method to ensure compliance with the rules should be used. Counseling and

summary action should be attempted to correct minor violations. However, when rule infractions require more formal resolution, a misconduct report may be written. If a misconduct report is written, it should be prepared as soon as possible after the violation is observed or reported. Since the possible sanctions are more severe for major misconduct, greater procedural safeguards are provided for those charged with such violations.

SUMMARY PUNISHMENT

C. An employee who observes a minor misconduct violation may impose summary punishment, which does not exceed 1 day toplock, 8 hours extra duty, or 7 days loss of privileges, for minor misconduct if the prisoner signs a waiver of her/his right to a minor misconduct hearing. Any nondangerous contraband shall be confiscated in conjunction with a summary punishment and turned over to appropriate institutional staff for proper disposition. The prisoner shall be given a contraband removal slip by the staff member confiscating the contraband.

D. A record of this action shall be on file with the deputy warden, assistant deputy warden or other supervisory level person. If the prisoner does not sign an offered summary action, the resultant misconduct

report shall be processed and heard as a "minor" regardless of the charge or the prisoner's disciplinary record.

MINOR MISCONDUCT

E. A prisoner charged with minor misconduct shall have a right to the following:

1. Advance written notice of the charge unless s/he waives this in favor of an informal summary action.
2. A hearing conducted in compliance with the procedures set forth in R 791.3310 by an employee designated by the institutional or Field Operations Administration (FOA) operating procedure. The employee designated as the hearing officer shall have had no prior direct involvement in the matter at issue.
3. To be present at the hearing. If the prisoner refuses to attend, it shall be verified on the hearing report that the prisoner was notified of the hearing and refused to attend. In all cases, the prisoner shall receive a copy of the hearing officer's written decision.
4. An appeal of the hearing officer's decision to supervisory staff at the level of assistant

deputy warden, camp supervisor or community program supervisor. The appeal must be filed within 24 hours of receipt of the hearing officer's written decision.

F. The hearing officer in a minor misconduct case shall ensure that all relevant evidence has been presented and that the prisoner has had adequate time and opportunity to prepare his or her defense. A prisoner does not have the right to a hearing investigator for minor misconduct but the hearing officer shall make a reasonable investigation of charges and assist those prisoners who have limited intelligence or education in presenting a defense. The decision of the hearing officer shall be based on a preponderance of the evidence.

G. A waiver of a minor misconduct hearing may be accepted by either the hearing officer or reviewing officer. Property determined to be nondangerous contraband at a minor misconduct hearing shall be confiscated and turned over to appropriate staff for disposition. (See 04.07.112, "Prisoner Personal Property Control.") The disposition shall be noted on the hearing report.

H. Unless a minor charge is part of a major misconduct hearing, minor

misconduct hearing reports shall not be filed in the prisoner's files, except that a copy of the minor misconduct hearing report shall be kept in the Residential and Electronic Programs (REP) field file or the counselor's file for at least 60 days after the date of the hearing for control and monitoring purposes and to provide the basis for establishing a pattern of minor reports if other action becomes necessary. If a major misconduct charge is reduced to a minor by the major misconduct hearing officer, a copy of the entire hearing record shall be retained by the hearing investigator as set forth later in this policy. Also, a copy of the hearing report shall be retained in the field or counselor's file for at least 60 days.

MAJOR MISCONDUCT

I. A major misconduct report may be written by any department staff person or a person under contract with the department who has knowledge that a misconduct has occurred. A major misconduct report shall be written if the behavior constitutes a non-bondable major misconduct charge.

J. Major misconduct which is also a felony shall be referred to the appropriate law enforcement agency as well as being pursued

through the departmental disciplinary process. The initiation of the departmental disciplinary process may be delayed if it would interfere with the criminal investigation or prosecution. Prisoners charged with major misconduct are entitled to a formal hearing, following the procedures set forth in R 791.3315. The major misconduct hearing process is further described in the sections set out below.

Review

1. A reviewing officer shall conduct a preliminary review with the prisoner of every major misconduct report. A reviewing officer shall be a supervisory level employee in Correctional Facilities Administration (CFA) institutions and in FOA, an employee specifically designated by procedure. Major misconduct violations which occur in CFA institutions, shall be reviewed within 24 hours after the report is written, unless there is reasonable cause for delay, as determined by the hearing officer. Major misconduct violations which occur in FOA shall be reviewed as soon as possible, unless there is reasonable cause for delay, as determined by the hearing officer. If the report is not reviewed within that time period, and there is

no reasonable cause for delay, it shall be dismissed by the hearing officer.

2. The review is the beginning of formal processing and investigation of the misconduct report and shall include:

   a. examination of the report to determine that it is appropriate and correct;.

   b. reading of the report to the prisoner;

   c. advising the prisoner of his/her right to witnesses, relevant documents, and a hearing investigator;

   d. notation on the misconduct report of the location of any physical evidence and attachment of a photograph, if appropriate; and,

   e. ensuring that the prisoner receives a copy of the misconduct report.

3. If the reviewing officer determines that a report is not appropriate or not properly written, s/he may return the report to the staff member who wrote the misconduct report for a re-write. The reviewing officer also may pull a misconduct report which s/he determines to be inappropriate, but

shall first discuss it with the reporting staff person. Once a misconduct report has been reviewed, it shall not be pulled except by the warden for good cause.

4. Any report which is pulled shall be retained by the warden for six months and shall be accompanied by a written statement indicating why the report was pulled. A misconduct shall not be pulled after it has been heard by a hearing officer. The prisoner or the warden may request a rehearing by submitting a Request for Rehearing form (CSH-418) to the Hearings Administrator.

5. At the review, the reviewing officer shall order the prisoner to be confined in segregation or on toplock pending a formal hearing if the charge is nonbondable (as designated on Attachment B) or if there is a reasonable showing that failure to do so would constitute a threat to the security or good order of the facility.

6. The warden or FOA area manager may allow a prisoner charged with a non-bondable offense to remain on bond if it is determined that this will not present a threat to safety or

security. In addition, a reviewing officer may place a prisoner who is charged with escape on bond if the escape charge was incurred at an institution of a lower security level than the one where the prisoner is now incarcerated.

7. For example, a prisoner who escapes from REP or a camp, and is returned to a level III facility, may be placed on bond status pending his/her hearing if the reviewing officer determines that s/he is not a threat to security at the present custody level if placed on bond.

8. If a prisoner charged with a non-bondable misconduct is allowed to remain in general population, the reason shall be stated on the misconduct report.

9. The reason given for confining a prisoner for a bondable offense must relate to the specific circumstances of the incident. In other words, it must state why this case differs from other instances of this charge and thus presents a threat to security. Conclusory phrases such as "necessary for the good order of the facility" are *not* acceptable as reasons. The reason must state the facts underlying the charge which

make it necessary to lock up the accused prisoner for an offense which policy has already determined can normally be safely handled as a bondable matter.

10. Whenever a prisoner is placed in segregation or on toplock for a charge or charges which are by policy bondable, and an adequate reason is not given on the misconduct report for this action, the hearing officer shall report the matter to the warden or FOA area manager and to the Hearings Administrator. The warden or FOA area manager shall ensure that all employees comply with this policy on bondable charges.

11. If a prisoner is placed in segregation or on toplock, the exact time and date of placement shall be noted on the misconduct report by the reviewing officer who also shall immediately notify the prisoner's housing unit of this placement. The person notified in the housing unit shall be indicated on the misconduct report.

12. In FOA, where a prisoner may be confined to a local jail pending a hearing, the date and time of placement in the jail or of notification of such

placement to the Department shall be noted on the misconduct report.

Investigation

13. A hearing investigator shall gather all witness statements and other evidence necessary to conduct a hearing. The prisoner may submit written questions to the hearing investigator to be asked of a witness. The hearing investigator shall obtain answers to all questions which s/he reasonably believes are relevant, not repetitious, and not a threat to the security of the facility.

14. The hearing investigator may initially determine if a question should be asked or a witness contacted. However, the hearing officer has the final authority and may require the hearing investigator to obtain an answer to a question if s/he determines that an answer is needed. The hearing investigator also shall contact any other witness, and obtain any documents, which are relevant to the charge.

15. It is the responsibility of the hearing investigator to conduct a complete investigation of the charge(s) and not simply respond to the questions raised

by the prisoner. The hearing officer also may interview a witness at the hearing if s/he determines this is necessary and not unduly hazardous to the safety of the facility, staff or prisoners.

16. The hearing investigator shall obtain all information requested by the hearing officer or clearly explain in writing why it cannot be obtained.

17. All staff members shall cooperate fully with the hearing officer and hearing investigator and shall comply with all requests for information or assistance necessary to conduct a proper hearing, as determined by the hearing officer.

18. All hearing investigator reports and written witness statements shall be either typewritten or done in black ink to facilitate copying of records on appeal. It shall be the responsibility of the warden or corrections center supervisor to ensure that all hearing investigator reports are kept in designated hearing investigator files at the facility where the hearing is held. They shall be kept in chronological order by date of hearing, and in order by prisoner number, so

the record can be retrieved if necessary for an appeal.

19. A copy of any confidential information (as determined by the hearing officer) *must* be kept with the hearing investigator's report and must be clearly marked as confidential by the hearing officer. These confidential statements are exempt from disclosure under the Freedom of Information Act. All photographs shall be attached to the hearing investigator report. Any videotapes which the hearing officer views and makes a part of the record also shall be retained by the institution for at least two years and clearly marked as part of the hearing record.

20. The reports shall be retained for at least two years after the date of the hearing. If a lawsuit is filed, the hearing investigator's report and all attached material (e.g., photographs; videotape) shall be retained until the litigation is completed. A facility will ordinarily be alerted that a lawsuit has been filed when a request is made by the Office of Policy and Hearings (OPH) for a copy of the investigator's report.

21. Physical evidence, other than photographs, may be kept in a separate place and shall be retained for at least 90 days after the hearing, or until litigation is completed if a lawsuit is filed.

Hearing

22. The formal hearing must be held within required time limits, which are set forth in R 791.5501. The day on which a prisoner is locked up or on which the report is reviewed with him/her is not counted in the time limit; however, the day on which the hearing occurs is counted.

23. The hearing officer shall ensure that all relevant evidence and testimony have been presented, and must return the matter to the hearing investigator for further investigation if needed. The hearing officer also shall ensure that the prisoner has had adequate time and opportunity to prepare a defense and that a reasonable and impartial investigation has been conducted.

24. The hearing shall be conducted by a hearing officer under the direction of the Hearings Administrator in the Office of Policy and Hearings. The

prisoner has the right to be present at his/her hearing, but a hearing may be conducted without the prisoner if a finding is made on the record that the prisoner has failed to appear after proper notice is given or is so assaultive or disruptive that the hearing cannot be held with the prisoner present.

25. All prisoners who are segregated or placed on toplock pending a hearing, or are classified to administrative segregation, shall be properly cuffed when brought to a hearing. Other restraints may be applied as deemed appropriate by the institution based on 04.05.112, "Managing Disruptive Prisoners."

26. In making a decision as to whether a prisoner is guilty of a charge, the hearing officer shall consider only evidence which relates to the specific charge or charges or their lesser included violations. Decisions shall be based upon a preponderance of evidence. The formal hearing is not an adversarial proceeding but is rather a fact-finding process in which all parties involved have a responsibility to reveal all relevant evidence whether

supportive or damaging to the person charged. Fairness is to be the paramount consideration of this hearing process.

27. It is not necessary that *Miranda* warnings be given during the hearings process. Statements made by a prisoner at a major misconduct hearing are not admissible in a criminal trial, except for purposes of impeachment or rebuttal. Therefore, a prisoner's silence at a misconduct hearing may be construed against the prisoner by the hearing officer.

Not Guilty Findings

28. If the prisoner is found not guilty or the charges are dismissed, no sanction shall be imposed and a report shall not be filed in any of the prisoner's files. However, a copy of the misconduct report, misconduct hearing report, and hearing investigation, if any, shall be retained by the hearing investigator to assist in responding to requests for rehearing and litigation. The hearing investigator shall also retain these documents in cases where a major misconduct charge was reduced to a minor by the hearing officer.

29. It shall be the responsibility of the warden or center supervisor

to ensure that these reports are properly retained and are not used against a prisoner These reports shall be kept for at least two years.

30. The hearing records for not guilty or dismissed charges shall be reviewed by the warden or designee to monitor for any errors which have been made. Complaints as to hearing officer performance shall be brought to the attention of the Hearings Administrator.

Posting of Hearing Results

31. A copy of the completed Major Misconduct Docket (CAH-991) shall be posted by the facility in an area which is not ordinarily accessible to prisoners, but is readily accessible to staff. It shall be posted within 48 hours of the hearing date and shall remain posted for at least 72 hours. A copy of the docket shall also be retained by the institution for at least two years after the date of the hearing.

CMIS Entry

32. It shall be the responsibility of the institution where the hearing is conducted and Central Office OREP to ensure that all major misconduct

hearing results are entered into CMIS. Guilty findings shall ordinarily be entered by the end of the next business day following the hearing, except that hearing results from camps and REP locations shall be entered within five business days of the hearing.

33. If all charges are [sic] result in a not guilty or dismissed finding, or if the charge(s) are reduced to minors, the hearing results shall be entered into CMIS for research and statistical reporting purposes only, and shall not be accessible by users of CMIS. After entry and auditing of the information on not guilties, dismissals, and minors, the hearing reports used for entry shall be destroyed.

SPECIAL PROVISIONS FOR MENTALLY ILL PRISONERS

Responsibility Determination

K. If a prisoner, the hearing investigator or the hearing officer raises the issue that the prisoner may not be responsible for the misconduct due to mental illness, a request for information on that issue shall be directed to the following:

1. If the prisoner is in a comprehensive care unit (CCU), an

intermediate care program (ICP) a protective environment (PE), or a residential treatment program (RTP), questions shall be directed to the treatment team;

2. For all other prisoners, questions shall be directed to psychological services or the outpatient mental health team, if applicable.

L. A prisoner is not responsible for misconduct due to mental illness if s/he lacks substantial capacity to know right from wrong or is unable to conform conduct to departmental rules. For purposes of this policy directive, mental illness is defined as a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or the ability to cope with the ordinary demands of life.

M. If the issue of responsibility is raised by the prisoner, and the hearing officer determines on the record that the claim is frivolous, a referral need not be made.

Acute Care

N. A prisoner who is admitted as a patient into an acute care psychiatric facility or unit shall not be subject to the disciplinary process. However, the prisoner's behavior and the immediate therapeutic

response must be thoroughly documented in the prisoner's medical file to ensure that the safety of the prisoner and others is not jeopardized by lack of knowledge of a serious incident.

O. Such incidents shall be discussed in the patent's discharge summary and other appropriate reports to ensure that they are brought to the attention of institutional staff when the prisoner is no longer an inpatient and shall be included in the parole eligibility report.

Comprehensive Care Unit (CCU)

P. An employee who observes a major misconduct violation by a prisoner housed in a CCU which is located in a department facility shall take necessary emergency action to prevent the prisoner from engaging in behavior which is dangerous to self, others or property, and shall confiscate any dangerous or contraband items. However, the prisoner shall not be placed in segregation or on toplock pending a hearing.

Q. If necessary, the prisoner shall be placed in medical seclusion or restraints pursuant to OP-BHC 32.01 "Physical Restraint Usage in the Management of Mentally Ill Patients/Prisoners" which governs restraints for psychiatric patients.

Immediately thereafter, the employee, without informing the prisoner, shall prepare a misconduct report and submit it to designated mental health staff to determine if the prisoner is responsible for the behavior. The misconduct report, however, must be reviewed within 24 hours, as set forth in the review section of this policy. If the prisoner is determined to be not responsible, the misconduct report shall be destroyed and the behavior will be addressed therapeutically. If this occurs, the procedures described above for prisoners in acute care shall be followed to ensure that the behavior is documented.

R. If the prisoner is found to be responsible for his/her behavior, the hearing officer shall be notified of the responsibility determination and the hearing shall proceed as set forth in this policy.

S. Prisoners in a CCU who are given loss of privileges as a sanction shall not be subject to the Loss of Privileges listed on CAJ 113. Rather, only the following privileges may be withheld:

1. Regular exercise yard;

2. Visits in the institution's visiting area;

3. Use of the weight pit;

4. Hobbycraft;

5. Library (General Library only, not Law Library);

6. Gym activities.

T. The hearing officer shall indicate on the misconduct hearing report which privileges are lost. If all of the above privileges are to be withheld, then the hearing officer need only fill in the number of days the sanction will run.

SANCTIONS

U. Upon a finding of guilt in a minor or major misconduct hearing, the hearing officer shall impose one or more of the sanctions set forth in R 791.5505. Hearing officers may consider all relevant information in determining a sanction, including the prisoner's prior record of misconducts and any mitigating or aggravating circumstances. The facility shall provide a record of the prisoner's prior major misconduct for use by the hearing officer in determining an appropriate sanction.

V. Loss of Privileges is a restriction of specified privileges as a sanction given by a hearing officer pursuant to R 791.5505 upon a finding of guilt at a major or minor misconduct hearing. Except

in Residential and Electronic Programs (REP), if a prisoner is given the sanction of Loss of Privileges, the hearing officer shall complete the Loss of Privileges form (CAJ-113), indicating which privileges are lost, and give a copy to the prisoner.

W. If a prisoner is given the sanction of loss of privileges, the institution shall retain copies of the Loss of Privileges form (CAJ-113) with the hearing investigator's report. A copy shall also be retained in the housing unit until the sanction has been served. If a prisoner transfers to a new housing unit or another facility, a record of current and future sanctions shall be forwarded to the receiving facility.

X. A prisoner given the sanction of toplock is restricted to his/her own cell, room, or bunk and bunk area.

1. "Bunk area" is that floor area next to the prisoner's bunk which extends to the mid-point between the adjacent bunks on all sides. If a prisoner is housed in a multiple occupancy cell or room, toplock may consist of placement in a cell/room which is designated as a toplock cell/room. If placed in such a cell/room, the prisoner shall be given the same access to his/her property

which would be provided if housed in his/her own cell/room and shall be treated in all other respects as described in this definition.

2. A prisoner on toplock status shall not leave his/her cell, toplock room or bunk area for any reason without specific authorization from the appropriate staff person. The prisoner may be deprived of use of his/her television, radio and tape player while on toplock status as provided in the institution's operating procedure.

3. The institutional operating procedure *may* authorize a prisoner on toplock status to go to the dining room and to attend college, school or work assignments, or other specified activities, including group religious services. A prisoner shall be released from toplock for regular showers, visits, medical care, including individual and group therapy and law library, unless law books are brought to the prisoner. Also, a prisoner on toplock shall have a minimum of one-hour per day of out-of-cell activity, which may include visits, meals and other required activities. If confined on toplock status for more than 30

consecutive days, a prisoner shall have a 7-day break of one hour per day of yard.

Y. A hearing officer may give credit for time spent in segregation or on toplock pending a hearing, but is not required to do so. The time given by the hearing officer during which the sanction is to be served shall not be changed by the institution.

Z. However, if a prisoner has accumulated a substantial amount of toplock, detention or loss of privileges sanctions, the warden may excuse the sanction periods that have not been served if any of the following conditions exist:

1. At the time of the request, the prisoner has not been found guilty of a major misconduct for at least six months;

2. Upon recommendation of a psychiatrist or psychologist; or

3. If cell space is needed in the segregation unit.

AA. A memorandum which sets forth the sanction periods that have been excused shall be signed by the warden and placed in the prisoner's record office and counselor file. A sanction that has been excused by a warden may not be reinstated at a later date.

BB. If a prisoner is serving a sanction of detention, toplock, loss of privileges, or any combination of these sanctions, whether for major or minor misconduct, s/he shall not be deprived of yard for more than 30 consecutive days without being provided a seven-day break during which the prisoner shall be given the opportunity for yard consistent with his/her status (e.g., toplock – one hour per day; segregation – one hour per day for five days per week).

CC. If the prisoner is serving detention only, s/he shall receive regular administrative segregation yard privileges on a continuing basis after serving 30 consecutive days of detention. However, yard privileges for all segregation prisoners are subject to restriction by written order of the deputy warden as set out in 04.05.120, "Segregation Standards."

DD. Except in OREP, if a prisoner is given the sanction of loss of privileges, the hearing officer shall complete the Loss of Privileges form (CAJ-113) and shall indicate which privileges shall be withheld. Only those privileges listed on the form may be affected by this sanction. Loss of visiting privileges shall be included only if the misconduct relates to the visitor(s) named on the form or

occurred in connection with a visit.

<u>MAJOR MISCONDUCT APPEAL (REQUEST FOR REHEARING)</u>

EE. If either the prisoner or the warden disagrees with the results of a hearing, they may submit a Request for Rehearing. That request must be submitted within 30 days after a copy of the hearing report is received. The Request for Rehearing must be submitted to the Hearings Administrator on the Request for Rehearing form (CSH-418), which shall be available on request from the hearing officer or housing unit staff, and shall be accompanied by a copy of the misconduct report and misconduct hearing report. A departmental request for rehearing shall be approved and signed by the warden.

FF. A rehearing shall be ordered if any of the following occurs:

1. The record of testimony made at the hearing is inadequate for judicial review.
2. The hearing was not conducted pursuant to applicable statutes or policies and rules of the Department and departure from the statute, rule or policy resulted in material prejudice to either party.

3. The prisoner's due process rights were violated.

4. The decision of the hearing officer is not supported by competent, material and substantial evidence on the record as a whole.

5. The hearing officer was personally biased in favor of either party.

GG. A rehearing also may be ordered by the Hearings Administrator on her/his own motion.

HH. If the request for rehearing is denied, or the prisoner is not satisfied with the results of a rehearing, the prisoner may appeal to Circuit Court, as set forth in MCLA 791.255.

OTHER ACTIONS RESULTING FROM MISCONDUCT

II. In addition to the sanctions imposed by the hearing officer, a prisoner who is found guilty of a major misconduct violation may be referred to the warden for forfeiture of earned good time or disciplinary credits pursuant to R 791.5513. In all cases involving assaultive behavior, forfeiture of good time or disciplinary credits shall be ordered if the prisoner is found guilty of the misconduct.

JJ. The warden may also issue a notice of intent to the prisoner informing him/her that special good time or special disciplinary credits may not be granted. A prisoner shall automatically not earn the disciplinary credits or good time which would have been earned during any month in which s/he commits a major misconduct violation which subsequently results in a finding of guilt.

KK. The prisoner who is found guilty of misconduct may also be referred to other appropriate staff or services, such as a psychological or psychiatric evaluation, counseling, program classification committee, or security classification. All prisoners who are found guilty of a nonbondable major misconduct shall be reviewed by the Security Classification Committee to ensure that the prisoner is still at the appropriate security and risk level.

LL. Reclassification to administrative segregation based solely on a major misconduct guilty finding may be done using the Security Reclassification Notice (CSO-423); an additional hearing is not required.

OPERATING PROCEDURES

MM. Wardens and the Administrator of the Office of Residential and

Electronic Programs shall ensure that the operating procedures necessary to implement this policy are in effect within 60 days of its effective date. Wardens shall submit a copy of their operating procedures to the appropriate Regional Prison Administrator (CFA) for approval.

III. AUDIT ELEMENTS

NN. A Primary Audit Elements List has been developed to ensure compliance with this policy by providing staff with a tool for self auditing. The List shall be used by wardens, Regional Administrators, the Hearings Administrator and the Administrator of OREP for auditing purposes on an annual basis unless more frequently required by the Director or Deputy Director and shall be retained onsite and made available to the Internal Auditor when requested.

APPROVED: /s/ Kenneth L. McGinnis 5/17/94
Kenneth L. McGinnis, Director Date

ATTACHMENT A

MAJOR AND MINOR MISCONDUCT

Attachments B and C list prisoner behavior which is prohibited and subject to disciplinary sanctions. The left-hand column lists and defines the violations; any

behavior that fits the definition is misconduct. In the right-hand column are specific examples of behavior fitting under the rule violation. These are just *examples*; other actions that fit the violation definition are also misconduct even though they are not mentioned in the right-hand column.

In addition to the violations which follow, three other kinds of charges are possible: accomplice, attempt, or conspiracy to commit a specific violation.

1. ACCOMPLICE – A prisoner who assists another to commit a specific misconduct, or, after it is committed, conceals the violation from the authorities. The charge should be written as "Accomplice to Assault," for example, and the report must describe what the prisoner allegedly did. Examples of being an accomplice include: acting as a 'lookout', holding down a victim, allowing use of cell/room for commission of a violation.

3. ATTEMPT – A prisoner intends to commit a specific rule violation *and* does something towards committing it, even though s/he may not have succeeded.

2. CONSPIRACY – A prisoner intends to commit a specific rule violation *and* agrees with *at least one other person* to commit the violation. No action is necessary.

A prisoner charged with a misconduct violation for possession of an item found in an area over which s/he has control, and has been assigned responsibility for, will be presumed to have possessed the item. The prisoner shall have the burden of proof in rebutting this presumption. A prisoner's area of control includes:

1. Assigned room or cell, including door track or frame;
2. If assigned to a multiple occupancy room or area, that part of the room assigned to the prisoner, including bed, locker, and surrounding wall, floor and ceiling space;
3. Any personal property belonging to the prisoner, unless it has been reported as stolen;
4. Area of work or school assignment for which prisoner is responsible.

Many rule violations necessarily include other less serious violations. A lesser included violation would contain some, but not all, elements of the greater charge. For example, a "lesser included" violation of assault and battery is threatening behavior; insolence is a lesser included violation of threatening behavior; and creating a disturbance is a lesser included violation of inciting to riot. If a prisoner is charged with misconduct, and the evidence does not support the particular violation charge, but does establish a lesser included violation, the hearing officer has the authority to find the prisoner guilty of the lesser included violation.

ATTACHMENT B

CMIS CODE (See Note Below)	*	MAJOR RULE VIOLATIONS	COMMON EXAMPLES
001 (Escape from minimum or community custody)	*	*Escape* Leaving or failing to return to lawful custody without authorization;	Leaving from hospital trip or while housed at hospital; hiding from authorities even if still on

050 (escape from secure facility)		failure to remain within authorized time or location limits (a) when released for work pass; (b) while on a public works crew; (c) while residing in a community residential home under electronic monitoring; or (d) during an authorized absence from work, school or other activity while residing in a community corrections center.	prison property, should be attempted escape; unauthorized change of approved destination on work pass or in community programs.
002		*Felony* Any act that would be a felony under state law is also a major misconduct violation. Reference shall be made to the specific statutory citation in all cases where this charge is alleged.	Breaking and entering – MCLA 750.110. (NOTE: Use this charge only if there is no other specific violation which is applicable.)
010	*	*Homicide* Causing the death of another person by any means.	

011 (prisoner victim) 015 (staff victim) 016 (other victim)	*	*Assault and Battery* Physical attack on, or intentional, non-consensual touching of another person done either in anger or with the purpose of abusing or injuring another; physical resistance of or physical interference with an employee. Injury is not necessary, but contact is.	Attack by one or more persons; striking with feces or other objects; spitting on another person. (Note that the victim of an assault and battery should *not* be charged with a violation of this rule.)

NOTE: The first number of the code for accomplice to any rule violation should be 1, for attempt 2, and for conspiracy 3 (e.g, attempted escape would be 201).

012	*	*Threatening Behavior* Words, actions or other behavior which expresses a intent to injure or physically abuse another person. Such misconduct includes attempted assault and battery.	Threats of sexual assault made by one prisoner to another prisoner; writing threatening letters to another person; threats made to a third person which are intended to place the person threatened in fear of harm.

*** Mandatory "nonbondable" charges**

013	*	*Sexual Assault* Sexual penetration of, or sexual contact with, another person without that person's consent; non-consensual physical contact for sexual purposes.	Rape; intentional touching of sexual area (e.g., buttocks, breasts, genitals) without consent; kissing or embracing without consent of one who is kissed or embraced.
014	*	*Fighting* Physical confrontation between two or more persons, including a swing and miss, done in anger or with intent to injure.	Fights between prisoners, whether with fists, broom handles or other weapons.
017	*	*Failure to Disperse* Failure or refusal of a prisoner to leave an area in which a disturbance is occurring when the prisoner is physically above to leave; includes obstruction of staff at the scene of the disturbance. Disturbance is defined as a fight between prisoners, subduing or taking into custody of a prisoner or prisoners by staff, destruction of	Preventing a staff member from coming to the aid of other staff; remaining at the scene of a fight to observe or offer encouragement to combatants; blocking staff who are removing a prisoner from an area.

		property, or any similar action or occurrence.	
020		*Disobeying a Direct Order* Refusal or failure to follow a valid and reasonable order of an employee.	Refusal to submit to a shakedown; fleeing from an officer after being directed to stop.
021		*Possession of Forged Documents; Forgery* Knowingly possessing a falsified or altered document; altering or falsifying a document with the intent to deceive or defraud; unauthorized possession or use of the identification card, prisoner store card, pass, or detail of another prisoner.	A fake pass, application, furlough paper, etc. which is represented to be true.
022	*	*Incite to Riot or Strike; Rioting or Striking* Advocating or instigating actions which are intended to seriously endanger the physical safety of	Encouraging other prisoners to take group action to injure staff, destroy property, or disrupt normal operations; refusal of prisoners as a group to leave the yard when

		the facility, persons, or property or to disrupt the operation of the facility by group cessation of normal activity; participation in such action. Joining others in unauthorized work stoppage.	instructed by staff to do so.
023		*Interference with the Administration of Rules* Acts intending to impede, disrupt, or mislead the disciplinary process for staff or prisoners, including failure to comply with a loss of privileges sanction imposed by a hearing officer.	Intimidating or tampering with an or [sic] witness; tampering with or [sic] evidence; interfering with an employee writing a misconduct report; making false accusations of misconduct against another prisoner or staff which results in disciplinary action being initiated against that person. (NOTE: Should not be charged as retaliation for the writing of a grievance; if written as result of a grievance, must be shown that prisoner knew allegation was false when s/he made it and intentionally filed a false grievance. Ordinarily, the

		statement of staff member refuting the claim will not be sufficient.)
024	*Bribery of an Employee* Offering to give or withhold anything to persuade an employee to neglect duties or perform favors.	
026	*Insolence* Words, actions, or other behavior which is intended to harass, or cause alarm in an employee.	Abusive language, writing or gesture directed at an employee.
027	*Destruction or Misuse of Property with Value of $10 or More* Any destruction, removal, alteration, tampering, or other unauthorized use of property which was a value of $10 or more.	Tampering with locking device; use of door plug; destruction of property belonging to another person.
028	*Failure to Maintain Employment* Failure of a prisoner in community residential	(NOTE: Applies only to prisoners in community programs and on Work-Pass)

		or work-pass programs to immediately report to appropriate department staff any absence from employment or training for illness, layoff, termination, or any other reason; failure to obtain prior staff approval for planned absences from, or voluntary termination of, employment or training.
030	* *Possession of Dangerous Contraband* Unauthorized possession of weapons, explosives, acids, caustics, materials for incendiary devices, escape materials or exempt policy directives, operating procedures or other restricted documents; possession of critical tools and materials or dangerous	Possession of gasoline, butane lighter, sulphuric acid, lye, prison-made knives, pipe bomb, rope and grappling hook, stored bodily fluids or anything which could be used as a weapon; possession of a screwdriver, hammer, hobbycraft knife, etc. if outside authorized area; possession of a road map for any area within the State of Michigan or any adjacent state;

	tools and materials as defined by policy; includes failure to return any item covered by this definition which is signed out for a work or school assignment or any other purpose.	possession of any diagram or other drawing of the layout of a correctional facility.
031	*Possession of Money* Possession of unauthorized amounts of money or money from unauthorized sources, money is defined as either cash or a negotiable instrument.	No money is authorized in institutions. Institutional tokens do not fall under this rule.
032	*Creating a Disturbance* Actions or wards of a prisoner which result in disruption or disturbance among others, but which does not endanger persons or property.	
033	*Sexual Misconduct* Consensual touching of the sexual or other parts of the body	Kissing, hugging, intercourse, sodomy. Exposure of sexual organs when prisoner knows officer

	of another person for the purpose of gratifying the sexual desire of either party, except that an embrace of a visitor at the beginning and end of a visit, or holding hands with a visitor during a visit is not sexual misconduct; intentional exposure of the sexual organs, to another person in a location or manner where such exposure has no legitimate purpose; imitating the appearance of the opposite sex; words or actions of a sexual nature directed at another person in order to harass or degrade that person.	will be making rounds. Wearing clothing of the opposite sex. Wearing of makeup by male prisoners. Whistling at and making sexual remarks to another person; making propositions of a sexual nature. (NOTE: Threats of sexual *assault* should be charged as Threatening Behavior.)
034 (alcohol) 039 (marijuana)	*Substance Abuse* Possession, use, selling, or providing to others, or being under the	Narcotics paraphernalia includes such items as marijuana and "crack" pipes, needles, syringes,

040 (heroin/ morphine) 041 (cocaine) 042 (other substance) 043 (drug test refusal) 044 (narcotics paraphernalia)	influence of, any intoxicant, inhalant, controlled substance (as defined by Michigan statutes), alcoholic beverages, marijuana or any other controlled substance which is used to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system; unauthorized possession of prescribed or restricted medication; possession of narcotics paraphernalia; failure of refusal to voluntarily submit to substance abuse testing which is requested by the Department for the purpose of determining the presence in the prisoner of any substance included in this charge.	etc. (that is, items used to administer narcotics but does not include such items as "roach clips," and cigarette papers.

035	*Unauthorized Occupation of Cell or Room* Being in another prisoner or prisoners' cell, room, or clearly defined living area without specific authorization from staff; being present in any cell, room, or other walled area with another prisoner or prisoners or a member or members of the public without staff authorization.	Two prisoners in a "one-person" cell; being in a room cell, bay, cubicle or other area to which the prisoner is not assigned; two prisoners in a restroom stall; prisoners and member of the public in prisoners' restroom or visiting area restroom.
036	*Out of place or Bounds / AWOL* Being within the lawful boundaries of confinement and not attempting to escape, but in a location without the proper authorization to be there; absent from where one is required to be; breaking toplock without authorization; being outside assigned housing	"Skating" in another block; no pass; no I.D. card; failure to return on time from furlough, but returned within two hours of deadline. ("Skating" in own housing unit during the day is a minor unless on toplock status.) Failure to be where required by detail.

	unit without prisoner identification card; being absent from required location during count.	
037	*Theft; Possession of Stolen Property* Any unauthorized taking of property which belongs to another; possession of property which the prisoner knows, or should have known, has been stolen.	
038	*Gambling; Possession of Gambling Paraphernalia* Playing games or making bets for money or anything of value; possession of gambling equipment, or other materials commonly associated with and intended for wagering.	Possession of dice or betting slips. Point spreads, items used as counters in a card game, and similar items.

ATTACHMENT C

MINOR RULE VIOLATIONS	COMMON EXAMPLES
(All are coded 049)	
Misdemeanor Any act that would be a misdemeanor if prosecuted under Michigan law is also a minor misconduct violation, unless specified elsewhere as a major. Reference must be made to the specific statutory citation in all cases where this charge is alleged.	Larceny under $100 – MCLA 750.356.
Abuse of Privileges Intentional violation of any departmental or institutional regulation dealing with prisoner privileges unless it is specified elsewhere as a major.	
Contraband Possession or use of non-dangerous property which a prisoner has no authorization to have, where there is no suspicion of theft or fraud.	Possession of unauthorized items or anything with someone else's name or number on it; having excessive store items or tokens.
Health, Safety or Fire Hazard Creating a health, safety or fire hazard by act or omission.	Dirty cell; smoking in unauthorized areas; lack of personal hygiene.

Temporary Out of Place / Bounds
in own housing unit during the day out of place for a brief time or adjacent to where supposed to be.

Unauthorized Communications
Any contact, by letter, gesture or verbally with an unauthorized person or in an unauthorized manner.

Love letters to another prisoner; passing property on a visit either directly or through a third person.

Violation of Posed Rules
Violation of rules of community residential programs, housing units, dining room, furlough, work or school assignment which is not covered elsewhere.

Violation of kitchen sanitary regulations; wasting food; excessive noise in housing unit, playing TV or radio without earphone; unauthorized driving of motor vehicle; failure to report income in OREP.

Horseplay
Any physical contact, or attempted physical contact, between two or more persons, done in a prankish or playful manner without anger or intent to injure or intimidate.

Towel snapping at others in showers, playful body punching; playing "grab-ass."

Lying to an Employee
Knowingly providing false information to an employee.

Giving a false name, number or room/cell assignment. (*Note*: making false accusations of misconduct is included under the major violation of interference with administration of rules.)

Destructive or Misuse of Property with Value of Less Than $10
Any destruction, removal, alteration, tampering, or other misuse of property which has a value of less than $10.

Excessive Noise
Creation of sound, whether by use of human voice, a radio, TV, or any other means, at a level which could disturb others.

Playing TV or radio above allowable level; banging objects against cell bars.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

[Caption Omitted In Printing]

MICHIGAN DEPARTMENT OF CORRECTIONS

MAJOR MISCONDUCT REPORT 4835-4240 5/92
(Please Print or Type) CSJ-240 A

Prisoner Number	Prisoner Name	Institution	Violation Date
213302	Mease-X	SMF	5-21-97

Time & Place of Violation 0744 Unit 3 Chowhall	Housing Unit 3
Room/Cell/Bunk 227	Reporting Staff Member's Name & Clock No. M Close 011216

Name of Major Misconduct Charge and CMIS Code
012 Threatening Behavior

Describe Violation:

At 0744 While watching 3 block chowlines, I made direct eye contact with prisoner Mease-X #213302 3-227. Mease-X contorted his face and made a statement that I believe was directed at me but I could not understand him over the room noise. I then walked into the chowhall to speak with Mease, I then noticed Mease-X was angerly [sic] walking towards me and looked very hostile, I immediately stopped. Mease kept walking and stopped approximately 2 inches from my face, starring directly into my eyes and breathing heavily on my face. This officer was in fear of being physically assulted and or injured. Mease's face was contorted with veins bulging at his temples. At this point Officer Metevia immediatly handcuffed Mease-X and escorted him to unit 2.

Mease-X was identified by prior contact and Unit #3 Master Count board

R. Metevia, D. McIntire	Misconduct Written Date: 5/21/97 Time: 1115

Other Employee Witnesses? (List)	Reporting Staff Member's Signature /s/ M Close

Reviewing Officer's Action
Location/Verification of Evidence _____

Status Pending
Hearing: ☐ Bond ☐ Toplock ☐ Segregation ☐ Other
Reason
(if non-bond): ☒ Non-Bond List
prisoner placed on T-seg because of above misconduct
☐ Bond Revoked (Must give reason)

Date and Time Given This Status: (Who notified in housing unit) 5/21/97 1251 Rio Bonnan	If Status Changed, Give Date
Hearing Investigator Requested? ☐ No ☒ Yes	Witnesses Requested? ☐ No ☒ Yes
Relevant Documents Requested? ☐ No ☒ Yes (list)	will submit
will submit	Hearing Date 5/26/97
Additional Comments:	NOTE: Your statement at this hearing will not be admissible in a criminal trial on this matter except for purposes of impeachment or rebuttal.
will submit	

I waive 24 Hour Advance Notice (Prisoner's Signature)	Date of Review 5/21/97	Time of Review 1255

NOTE: IF YOU ARE FOUND GUILTY OF MAJOR MISCONDUCT:

(1) You may be classified to a higher level of security, including Administrative Segregation.

(2) You will forfeit the disciplinary credit or good time earned for the month in which the misconduct occurred.

(3) You may lose accumulated good time or disciplinary credits, if ordered by the Warden

/s/ Sgt. K. Goheen 11225

(Print or Type Reviewing Officer's Name & Clock No.)

/s/ [Illegible]

(Reviewing Officer's Signature)

prisoner refused to sign copy [illegible] 5/21/97 1256

(Prisoner's Signature)

I have received a copy of this report. My signature verifies receipt only and does not mean that I agree with this report.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

[Caption Omitted In Printing]

MICHIGAN DEPARTMENT OF CORRECTIONS — 4835-4241 9/91
MAJOR MISCONDUCT REPORT — CSJ-240 B

Prisoner Number	Prisoner Name	Institution	Violation Date
213302	Mease-X	SMF	5-21-97

Charge: Threatening Behavior 012

If charge changed by H. O.: insolence 026	Plea ☐ GUILTY ☒ NOT GUILTY
Major Misconduct Report Read To and Discussed with Prisoner (Check if Applies) ☒	No Hearing Investigation Requested ☐ (Check if Applies)
Hearing Investigation Read To and Discussed with Prisoner (Check if Applies) ☒	

EVIDENCE/STATEMENTS IN ADDITION TO MISCONDUCT REPORT:

The resident stated that c/o Close was staring at him as he ate and then made flinching motion towards him and he felt threatened by the officer's body languagge. Statements from RUO McIntire, RUO Metavia, Sgt. Tipton, RUO Bellows, and inmates Sc rews, Jones-el, Holland, Walker and the resident were read aloud.

REASONS FOR FINDING:

The hearing officer finds from a comparison of the report, witness statements of staff and the resident that the resident and officer were staring at each other and the officer approached the resident and the resident got up from his seat in an alarming manner and stood face to face with the officer. The resident's statement indicates he was angry at the officer for staring at him and the resident's actions in this context indicates that he acted with the intent to alarm and harass the officer by standing and facing off the approaching officer. The resident made no threats of physical injury or specific threats of assault thus the charge is changed to Insolence.

FINDINGS: CMIS Code

CHARGE NO. 1 ☒ GUILTY ☐ NOT GUILTY
☐ DISMISSED 026

CHARGE NO. 2 ☐ GUILTY ☐ NOT GUILTY
☐ DISMISSED ___

CHARGE NO. 3 ☐ GUILTY ☐ NOT GUILTY
☐ DISMISSED ___

CHARGE NO. 4 ☐ GUILTY ☐ NOT GUILTY
☐ DISMISSED ___

DISPOSITION(S):

7 Days of Detention ___ Days of Toplock

Begins 5-27-97 Ends 6-3-97

30 Days Loss Privileges _____

_____ Credit Days

Begins 6-3-97 Ends 7-3-97

$___ Restitution ___ Hours of Extra Duty

HEARING OFFICER'S NAME & CMIS CODE (Typed)	Major Misconduct Hearing Report personally handed to Prisoner by Hearing Officer this date (check if applies) ☒
Arvid Perrin 015	

HEARING OFFICER'S SIGNATURE	Major Misconduct Hearing Report Given to Staff Member by Hearing Officer for Delivery to Prisoner this date (check if applies) ☐	
/s/ Arvid Perrin	Date of Hearing 5-27-97	(Name & CLock No. of Staff Member)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

[Caption Omitted In Printing]

MICHIGAN DEPARTMENT OF CORRECTIONS — 4835-0113 10/89
LOSS OF PRIVILEGES — CAJ-113

Prisoner Name	Number	Cell/Unit	Charge(s)
Mease-X	213302		026

Below is a list of privileges provided to prisoners. Because you have been found guilty of major/minor misconduct, you will lose (circle either (a) or (b):

(a) All privileges listed below.

(b) The privileges listed below which are marked with a check.

This loss of privileges is for 30 days and will begin on 6-3-97 and end on 7-3-97
(Date) (Date)

(Maximum for major misconduct is 30 days: maximum for minor is 14 days.)

___ Day Room; Card Room, Social Room, Game Room, Pool Room

___ Exercise Facilities, such as Field House, Gym, Weight Room, Pool Room

___ Group Meetings, such as Bible Class, La Causa, Jaycees, etc.

___ Hobbycraft

___ Prisoner Store

___ Leisure Time or Special Activities, such as outside singing groups, athletic tournaments, social passes outside the facility, etc.

___ Library (General Library only; NOT Law Library)

___ Movies

___ Music Practice; Musical Instrument

___ Outside visiting area

___ Radio; Tape Player

___ Recreational Details

___ Study Room; Quiet Room

___ Telephone (except calls to/from designated attorney or Ombudsman)

___ T.V./T.V. Room or Area

___ Visits with _____ (Name of Specific Visitor(s) (Applicable only if name(s) are filled in)

___ Yard (Outside and Unit)*

[COPY TO PRISONER MAY 30, 1997]

/s/ Arvid Perrin
Signature of Hearing Officer & Date 5-27-97

* In NO case shall a prisoner be deprived of both of these privileges for more than 30 consecutive days; a break of at least 7 days must be allowed before another 30-day period may begin.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Theodore Levin United States Courthouse
231 W. Lafayette, Room 564
Detroit, Michigan 48226

Prisoner Civil Rights Complaint for Cases Brought Under 42 U.S.C. § 1983

(Filed Jun. 2, 1998)

Plaintiff's Information

Name
Shakur Muhammad aka John E. Mease

Inmate Number
213302

Place of Confinement
Ionia Maximum Correctional Facility (ICF)

Street	*City*	*State*	*Zip Code*
1576 W. Bluewater Hwy	Ionia	Michigan	48846

Any additional plaintiffs to this action should be listed on a separate 8½ x 11" sheet of paper and securely attached to the back of this complaint. Please provide names, inmate numbers, and addresses for each plaintiff.

Defendant's Information *(This information must be current)*

Name	*Position*
Mark Close	Correctional officer

Street or P. O. Box Number
4713 West M-61

City	*State*	*Zip Code*
Standish	Michigan	48658

Are you suing this defendant in his/her <u>personal</u> or <u>official</u> capacity? [✓] *Yes* [ ] *No*

Any additional defendants to this action should be listed on a separate 8½ x 11" sheet of paper and securely attached to the back of this complaint. Please provide their names, positions and current addresses, and the capacity (personal or official) in which you are suing the defendants.

I. PREVIOUS LAWSUITS

Have you begun any other lawsuits in state or federal court relating to your imprisonment?

YES [✓] NO [ ]

If "YES", complete following section; if "NO", proceed to Part II.

Please list all prior civil actions or appeals that you have filed in federal court while you have been incarcerated.[1]

1)
Docket Number:
97-1226

Name of Court:
U.S. Court of Appeals Cincinnati, Ohio

Parties (Caption or Name of Case):
S. Muhammad aka Mease v. Hartley, Close, Et. al.

Disposition:
Affirmed

[1] This notification is pursuant to 28 U.S.C. § 1915(g).

2)
Docket Number:
96-10053-BC

Name of Court:
S. Muhammad aka Mease v. Hartley, Close, Et. al.

Parties (Caption or Name of Case):
U.S. District Court Eastern District of Michigan
Northern Div

Disposition:
Dismissed

3)
Docket Number:
94-74926(36)-DT

Name of Court:
U.S. District Court Boston District of Michigan
Southern Div.

Parties (Caption or Name of Case):
Mease v. Toth, Close, Et. al.

Disposition:
Dismissed

Note: Any additional civil actions should be listed on a separate sheet of 8½ x 11" paper.

4. # unknown
U.S. District Court Eastern District of Michigan
Mease v. Cobb
Dismissed

5. # unknown
U.S. District Court Western District of Michigan
Mease v. Jegla
Dismissed

II. ADMINISTRATIVE REMEDIES

1. If you are in the custody of the State of Michigan or one of its subdivisions, did you:

File a grievance with the Step 1 Grievance Coordinator?	YES [ ]	NO [✓]
Appeal to the Step 2 Grievance Coordinator?	YES [ ]	NO [✓]
Appeal to the Step 3 Grievance Coordinator?	YES [ ]	NO [✓]
Seek a rehearing?	YES [ ]	NO [✓]
Seek State Circuit court review of a misconduct hearing?	YES [ ]	NO [✓]

If you did not take one or more of the steps, please explain why:

Not grievable because of misconduct, letters regarding issue was sent prior to and following occurance [sic] to prison Director/Warden

2. If you are a federal detainee, prisoner, or parolee and if your claim concerns parole, did you appeal to the National Appeals Board of the United States Parole Commission?

YES [ ] NO [ ]

If not, explain why:

N/A

3. If you are a federal detainee, prisoner, or parolee, and if your claim involves something other than parole, did you:

Attempt to resolve your complaint informally?	YES [ ]	NO [ ]
File a formal complaint?	YES [ ]	NO [ ]
Appeal to the warden?	YES [ ]	NO [ ]
Appeal to the Regional Director of the Bureau of Prisons?	YES [ ]	NO [ ]
Appeal to General Counsel for the Bureau of Prisons?	YES [ ]	NO [ ]

If not, explain why: N/A

III. STATEMENT OF FACTS

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include the names of other people, dates, and places involved in the incident. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim on blank 8½ x 11" sheets of paper and attach them to the last page of this complaint.

1. On 5-21-97, Plaintiff was incarcerated at Standish Maximum Facility (SMF), Unit 3 in Standish, Michigan.

2. On 5-21-97, Defendant was employed as a correctional officer at SMF and was assigned to Unit 3. Defendant was

standing with Sgt. Tipton and c/o Metiva while observing the dining area in Unit 3.

3. On 5-21-97, Plaintiff entered the Unit 3 dining area, got his breakfast tray and seated himself. Plaintiff began eating and noticed that Defendant was staring at him. Plaintiff continued eating and about half way through his meal noticed that Defendant was still staring at him. Plaintiff stared back. Defendant, while continuing to stare, then made a fighting stance towards Plaintiff. Plaintiff turned away and began to drink his coffee, but saw Defendant coming into the dining area at a fast pace with his face contorted. Plaintiff, being threatened by the Defendant's prior body language and his fast approach, got up from the table and walked directly towards the only exist and towards the Defendant. When Defendant and Plaintiff came within a foot of one another, Defendant stated, "whats up", while staring angerly [sic] at Plaintiff. Plaintiff did not respond. c/o Metiva and Sgt. Tipton handcuffed Plaintiff and took him to a Unit 2 detention cell. (See Exhibit A, major misconduct hearing record.)

4. Three to four hours later, Defendant falsely charged Plaintiff with threatening behavior and intentionally deleted the actual occurances [sic] from the report. (See Exhibit A, major misconduct report of 5-21-97.)

5. On 5-27-97, a major misconduct hearing was held and Plaintiff was acquitted of threatening behavior but found guilty of insolence for "getting up from his seat in an alarming manner and standing face to face with the officer." (See Exhibit A, hearings report.) Plaintiff was sanctioned to 7 days detention and 30 days loss of privileges as a result of the misconduct charge.

6. Plaintiff has filed two 42 USC § 1983 civil suits against Defendant price to this presence [sic] claim, and institutional grievances at SMF. (See Exhibit B, the court documents verifying Defendant as a party in prior § 1983 suits, and Exhibit C, SMF grievances against Defendant!) (See note 1 at bottom page 4B.)

7. Due to Defendant's retaliatory conduct, Plaintiff suffered physically as he was subjected to 43 days of unjust loss of his liberty and Plaintiff suffers mental and emotion [sic] anguish as a result of Defendant's threatening conduct and retaliatory disciplinary punishment.

Claim

Defendant framed Plaintiff in retaliation for the Plaintiff's exercise of his First Amendment rights.

S. Muhammad
5-1-98

Note #1. Exhibits A through C will be forwarded to the court, defendant, and his attorney when the case is formally given a case number, as the MDOC refuses to copy legal Exhibits for indigent prisoners for non-pending litigation. This rule requires Plaintiff to have a case number before he can get legal copies.

IV. RELIEF

State briefly and exactly what you want the Court to do for you.

Plaintiff requests the misconduct charge expunged from his file because Defendant used the prison disciplinary

process to retaliate. Plaintiff requests $4,300.00 in compensatory damages and $5,000.00 in punitive damages for the physical and mental injuries sustained during his 43 days of loss of liberty due to Defendant's retaliatory conduct.

I declare under penalty of perjury that the foregoing is true and correct.

May 1st, 1998 (Date) /s/ Shakur Muhammad (Your Signature)

United States District Court
Eastern District Of Michigan
Northern Division

SHAKUR MUHAMMAD,

Plaintiff,

v.

MARK CLOSE, in individual and official capacity,

Defendant.
_____/

Case No.
98 CV 10153BC
Hon. Robert H. Cleland
Mag. Charles Binder

AMENDED CIVIL RIGHTS COMPLAINT

This is a § 1983 civil rights complaint filed by Shakur Muhammad, a state prisoner, alleging violation of his constitutional rights and seeking compensatory, punitive and any other just and equitable relief this court deems appropriate. The Plaintiff requests a trial by jury.

Jurisdiction

1.) This is a civil rights action pursuant to 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. § 1343.

Parties

2.) On 5-21-97, Plaintiff was incarcerated at Standish Maximum Facility (SMF), Unit 3 in Standish, Michigan.

3.) On 5-21-97, Defendant was employed as a correctional officer at SMF and was assigned to Unit 3.

Statement Of Facts

4.) On 5-21-97, Plaintiff entered the Unit 3 dining area, got his breakfast tray and seated himself. Plaintiff began his meal and noticed that Defendant was staring at him through the hallway window. Plaintiff continued his meal and about half way through, noticed that Defendant was still staring at him. Plaintiff stared back. Defendant, while continuing to stare, then made a fighting stance towards Plaintiff. Plaintiff turned away and began to drink his coffee, but saw Defendant coming into the dining area at a fast pace with his face contorted. Plaintiff, being threatened by the Defendant's prior body language and his fast approach, got up from the table and stood face to face with Defendant. When Defendant was within a foot of me, he stated, "whats up", while staring angerly [sic] at me. Plaintiff did not respond. c/o Metiva and Sgt. Tipton handcuffed Plaintiff and took him to a Unit 2 detention holding cell. (See Exhibit A, major misconduct hearing record.)

5.) Three to four hours later, Defendant falsely charged Plaintiff with threatening behavior and intentionally deleted the actual occurances [sic] from the report. (See Exhibit A, major misconduct report of 5-21-97.)

6.) On 5-27-97, a major misconduct hearing was held and Plaintiff was acquited [sic] of threatening behavior but found to be guilty of insolence for "getting up from his seat in an alarming manner and standing face to face with the officer." (See Exhibit A, hearings report.) Plaintiff was sanctioned to 7 days detention and 30 days loss of privileges as a result of the misconduct charge.

7.) Plaintiff has filed two 42 U.S.C. § 1983 civil suits against Defendant prior to this present claim, and institutional grievances at SMF. (See Exhibit B, the court documents verifying Defendant as a party in prior § 1983 suits, and Exhibit C, SMF grievances against Defendant.)[1]

8.) Due to Defendant's retaliatory conduct, Plaintiff suffered physically as he was restrained and subjected to 6 days of unjust loss of liberty. Plaintiff also suffers mental and emotional anguish as a result of defendant's threatening conduct and retaliatory disciplinary action.

Claim

Defendant framed Plaintiff in retaliation for the Plaintiff's exercise of First Amendment rights.

Note #1. Plaintiff is unable to acquire copies of the above stated Exhibits at present due to lack of funds. However these Exhibits are the exact same Exhibits from the Original 5-1-98 complaint. Plaintiff cannot obtain copies until May of 99, and will forward at that time.

Relief

Plaintiff requests $10,000.00 in compensatory and punitive damages for the physical, mental and emotional injuries sustained as a result of defendant's retaliatory acts.

"I declare under penalty of perjury that the foregoing is true and correct."

April 5th, 1999

Respectfully submitted,
Shakur Muhammad
ICF #213302
1576 W. Bluewater Hwy.
Ionia, Michigan 48846

Proof Of Service

The undersigned certifies that copies of the foregoing "Amended Complaint" have been served upon the clerk of this court and the defendant's attorney by U.S. mail postage pre-paid at Ionia, Michigan on April 5th, 1999.

/s/Shakur Muhammad

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SHAKUR MUHAMMAD,
(#213302) a/k/a John Mease,

Plaintiff,

vs.

MARK CLOSE,

Defendant.

Case No. 98 cv 10153 BC
Hon. Victoria A. Roberts
Mag. Charles Binder

DEPOSITION

of SHAKUR MUHAMMAD, taken before Lynne K. Haf, Notary Public, at the Ionia Maximum Correctional Facility, 1576 West Bluewater Highway, Ionia, Michigan, Tuesday, July 11, 2000, noticed for 10:00 A.M.

* * *

[9] A Um-hum.

Q Is that a yes?

A Yes.

Q And down about halfway where it says: Prisoner antagonistic to law enforcement officers, what is written in that section?

A Whoever wrote the report made allegation that I threatened to kill guards and a judge.

Q Now, how long were you in Kent County Correctional Facility?

A I'm not sure. A little over three months, though.

Q Was this early?

A Pardon?

Q Was this a while ago? Was this like early 1990s or what?

A Yes, it was in mid-1990.

Q Okay.

A May/June through November – December 1, like I said, I was taken out of there.

Q Let's –

A This is February 12, 19–

Q Let's get to really the substance of your lawsuit. Would you just describe in your own words what happened.

A Got up, went to chow with everybody else on the [10] rock. Got to the chow hall, got my tray. Sit myself at the normal seat where I sit at. And as I sat down, I noticed that Sergeant Tipton, Defendant Close and Officer Matevia, M-A-T-E-V-I-A, they were standing outside the window that I was facing towards talking to one another.

I noticed that Close was staring at me, had a smile on his face. So I went on about my business knowing that we had prior problems in the past which included grievance litigation and different problems like that. So I went on about preparing my breakfast.

As I sit there, other prisoners came and sit down, Prisoner Walker, Jones-El, Screws. Anyway, we sit down. They sit down, and we started talking and stuff. And as we was talking, preparing our food, eating our food and so forth, I continually noticed Mark Close staring at me.

Q Now, at this point, how far away was Mark Close?

A See that table there?

Q Okay. The –

A If I was sitting on the inside quarter, he would be standing out in the hallway, where that window is – or where that chalkboard is.

Q Okay. So he's really in a different room looking [11] through a window?

A He's standing in the hallway looking through the window. If that door was open, it would be the same circumstance.

Q Okay. So there's a window between you, and it was, what would you say, about 30 or 40 feet away? Is that –

A No, no, no, no. That's not 30 or 40 feet. That's no more than 10, not even 10 – not even 10 feet.

Q Oh, okay. So you're saying the table by there – that's about where you were sitting –

A Right.

Q – and he was out – okay.

And although there was a partition between you, you say it was about eight or ten feet?

A No more than – no more than ten feet.

Q Okay. Go on.

A Anyway, he was standing out in the hall, kept continuing to stare. And about halfway through the meal,

I noticed he was continuing to stare, and I was taking it like he was trying to intimidate me and stuff, so I gave it back at him, and I stared back at him. He made this gesture towards me like this (indicating).

Q Okay. So this gesture is his hands are sort of [12] straight out in front about –

A Like this (indicating).

Q About, what is that, two and a half, three feet apart. So were his palms up?

A Yes.

Q Okay.

A He's making this gesture, hunched, making this gesture like this, coming forward.

I turned away from him. I go to drink my coffee, like I'm not paying attention to you, nonverbal communication. So – and as I turn away from him to take a drink from my coffee, he's coming through the door saying something, and he was waving his arms.

So I get up from my table. He was coming at me, looking at me, waving his arms and making a statement. I get up from my table.

Q How –

A He comes directly in front of me and stand about a foot apart face to face. And he says: What's up? I didn't say nothing, didn't make no response or nothing to him.

Q Now, you mentioned that you got up from the table. How far way was Mark Close when you got up from the table?

[13] A He entered the doorway where that gold chair is right there –

Q Okay. So –

A – is where I was when I – I was fully standing up and took one step. Me and him were far away from that corner of the table right there.

Q Okay. So from your chair, the doorway was about five or six feet or so? That's where he came in?

A No. Corner of the table ain't nothing but about – well, you said feet, yes, five, six feet.

Q Okay. Okay. And so – just let me get this straight – so when he came to the door, that's when you got up?

A I stood up when I seen him coming through the doorway waiving [sic] his arms. He was inside of the door, because – you know, he was inside of the doorway, but I wasn't looking in his direction. Like I said, I turned from him and started drinking my coffee. I noticed him coming through the doorway saying something inside the door or coming towards me, so I stood up.

Q Now, you say coming towards you. Was he still coming in the room, or coming right –

A He was coming towards me.

Q Okay. Was there any other –

[14] A Pointing and waiving [sic] his arms in my direction making comments towards me.

Q Were there any other people sitting with you?

A Yes.

Q Okay. How many other people were sitting with you?

A Three.

Q And who were those people?

A Jones-El, Screws, and Walker.

Q Did you hear what Officer Close was saying?

A I really – at the time, I was – I really – I was shocked by the way he was coming at me. But like I said, I was alarmed by the way he was coming at me, and I stood up to defend myself. I didn't pay attention to what he was saying. It was his body language to what I was paying attention to.

Q So you – I just want to get this straight –you – he was saying something, but you don't know what that is?

A No.

Q And you say he was waiving [sic] his arms around. Would you describe a little more what you mean by that.

A When he came through the door, he was making motions with his arms. When he came through the door, he was making motions like this here. He was saying something. I don't know, just waving or something [15] his arms.

Q So like the kind of gesturing people do when they talk?

A Yes.

Q Okay. Now, your lawsuit involves a major misconduct. When did that happen?

A Same date.

Q So is this something where he immediately issued the major misconduct?

A Just this incident.

Q And I guess what I'm trying to say is, when was it that you found out that the major misconduct – I mean, is it an immediate thing or a couple of hours later or, you know, when is it that you actually get the ticket?

A I was taken from the chow hall at the time of the incident that we just spoke about. I was taken to a detention unit.

Q Who took you?

A I was taken by Officer Matevia and Sergeant Tipton. When I was placed in Unit 2, I stayed in Unit 2 holding cell until nearly a little past 11:00 before I was notified that a ticket was actually going to be written. And then a ticket was reviewed with me sometime after noon.

[16] Q Now, you said that Officers Tipton and Matevia were the ones that took you away?

A Yes.

Q Okay. Now, could you explain how that happened. And what I'm getting at is, did they just go up and grab you, or did Officer Close tell them to go get you? I mean, how was it that –

A Me and Officer Closer [sic] were standing face to face. Officer Close said: What's up? I didn't respond to what he said.

Officer Matevia then was first in the door, and Sergeant Tipton was following him. Sergeant Tipton said: Go to you cell – no, he didn't say go to your cell. He said: Lock up. Okay? Which means: Go to your cell.

So I started to go lock up. Instead, Matevia said: Put on the cuffs. I looked at Tipton. So I turned around and put on the cuffs. He didn't say nothing. I turned around and put on the cuffs, and they took me.

Q Now, when you're talking, how far away were you from Officer Close?

A Within the radius of a yard. We were all within the radius of a yard of each other.

Q So you're explaining that this was a – basically, [17] like a nose-to-nose kind of situation with Officer Close?

A Some way we were inches apart. Some say we was a foot apart. And some say actual statement about how close we are, he said that – check in the ticket. It claims that – alleges that I was breathing on his face.

Q Now, how far away do you say you were?

A I would say we were at least a foot apart.

Q Now, you mentioned that you were eating with Jones-El, Screws and Walker. Who else was in the room at the time?

A A lot of other prisoners. A lot of them.

Q Like –

A I can't recall all of their names.

Q Sure, But what –

A I know one of them was Zebadiah Holland. Do you know how to spell that? Z-E-B-A-D-I-A-H, H-O-L-L-A-N-D.

Q So we have the three officers, the four other inmates that you know their names and approximately how many other inmates do you think were in there? I mean, are we –

A Ten.

Q About ten?

[18] A Yes.

Q Now, also in your complaint you mentioned something about Officer Close's face all contorted. What do you mean by that?

A His face was angry. His face was all messed up. He was – his face was all broke up. He was staring at me all – like he was going to do something, red in the face.

Q Now, from when the officer and you looked at each other through the window and until you got taken away, about how long was that?

A Say that –

Q Basically, that the whole incident, about how long did it take?

A I can't tell – I can't say for sure. Are you talking from the time we came up from breakfast – I would say that was 7:00 – maybe 7:30 we came into the chow hall. All right. So maybe I sat at the table five, six minutes before this incident occurred, and I was taken to the hall.

Q Okay. So –

A Maybe a little longer.

Q So after you noticed what you described as Officer close staring at you, how long after that until he came in?

[19] A What?

Q Because you had said earlier that Officer Close was staring at you through the window; correct?

A Right.

Q Now, after you noticed that, about how long until Officer close walked in?

A I noticed it from the time that I sat down at the table.

Q Oh, so it's right away.

A The whole period of time that I was in there, it's the whole period that he was doing it.

Q So the officers are already there before you even get to breakfast?

A Right.

Q Now, prior to that incident, how long did you know Officer Close?

A I didn't – I knew of him since 1994.

Q And in your lawsuit here you're claiming that these actions were in retaliation for prior lawsuits and grievances; is that correct?

A Yes.

Q Let's start with the lawsuits. Would you explain what these are about and how they related to Mr. Close.

A In 1990 – all of the lawsuits Close involved [20] hisself [sic] in situations between me and other individuals. And because of my litigation with officers other than Close, Close call himself aiding them, harassed, retaliated, did all kinds of things, even threatened me, as one of the grievances I submitted has on it, with physical violence. So it's just been – it has just been a constant problem between me and him from 1994, from the time he chose to involve hisself with my litigation with other officers.

Q Okay. So I just want to get this straight. In your complaint you talked about two separate lawsuits; correct?

A Yes.

Q And in both of these lawsuits, they involve other officers but not Officer Close?

A No. Both of them lawsuits Close is named as defendant and they –

Q And other officers?

A With other officers.

Q Okay.

A Et al.

Q Has Officer Close ever struck you?

A No.

Q Has Officer Close ever physically harmed you in any [21] way?

A No.

Q Now, in your complaint and amended complaint you talk about a physical injury. Would you explain what you mean by that.

A Physical injury to the extent that we're talking about in the first amended retaliation claim, we're talking about the time that he placed me in detention, punitive detention unlawfully in retaliation for no reason, false, total lie, had me placed in a detention-type setting, understand, which is my physical person, right, for a period of six days leading up to a hearing.

Q Okay. So that's what you're referring to a physical injury, not actually –

A Right.

Q – not actually you got cut or anything like that?

A No.

Q Okay. Now, I'm just going to read a paragraph from your amended complaint where you state: Plaintiff requests $10,000 in compensatory and punitive damages for the physical and emotional injuries sustained as the result of Defendant's retaliatory conduct.

And I just want to ask that – this [22] is the compensation you're asking for?

A Yes.

Q Okay. So this is an accurate representation of what you're asking the court to give you?

A At this time, yes.

Q Is there anything else, or is this it?

A I'm not an attorney.

Q Sure.

A I did that – I did that on my own.

Q Okay.

A And I'm not an attorney, and I think that maybe I need to review in and out on that particular topic a little bit with my attorney. However, I do believe that $10,000, as far as monetary relief, is concerned is –

Q I guess what I'm asking, though, is that the monetary relief is all you're asking for? As far as you're not asking for transfers or –

A Then, again, I agree with Judge Cleveland, that there is other possible declaratory and injunction – different types of reliefs available. If my attorney and I talk about it, might decide to pursue. I don't know.

Q But that wasn't in your amended complaint?

A What?

[23] Q But that was not in your amended complaint?

A Yes, I did that pro se.

Q Okay. Now, other than the misconduct that gave rise to this lawsuit, have you had other misconducts?

A Absolutely.

MR. HIMEBAUGH: And, Court Reporter, would you mark this as Deposition Exhibit 2.

(Muhammad Deposition Exhibit No. 2 was marked for identification by the Court Reporter.)

BY MR. HIMEBAUGH:

Q I'm going to just go through this briefly just to confirm that my information is correct. As you know, this summary is from March 24, 1991, through August 5, 1999.

Now, is it true that the abbreviation 012 stands for threatening behavior?

A (Nodding head affirmatively.)

Q Okay. Is that a yes?

A Yes. Yes.

Q Okay. Now, according to the summary, you had 19 of these misconducts. According to your information, is that the correct statement?

A (Nodding head affirmatively.)

Q That's yes?

[24] A Yes.

Q Now, is it true that the abbreviation 020 stands for disobeying a direct order?

A Yes.

Q Okay. According to the summary, you had 30 of these misconducts. Is this true, to the best of you knowledge?

A I'm not going to continue answering. I ain't counted them. I don't know. Possibly.

Q Okay. And is it true that 026 stands for insolence?

A 026, yes.

Q And according to this summary, it's reported that there is ten of those. Does that sound accurate to you?

A I have no idea.

Q Well, you can have –

A You want me to take time and count all of these up?

Q Well, I just want to make sure my information is correct, if there's no errors in – I mean –

A This –

Q Does ten sound right, I mean, versus zero or versus a hundred?

A This dates back 1991; right? It's possible that I had ten insolence charges against me during that time period.

[25] Q And it's true that the abbreviation 036 stands for out of place?

A I don't even know that one.

Q So you're not familiar?

A I do – yes. I do recall getting an out of place ticket.

Q Now, what does that mean?

A It meant that I went to the chow – I came back from the gym, changed clothes, washed up, changed clothes, ran out of my house to try to get to the chow hall so I could get something to eat and forgot my ID. When they asked me for my ID, I couldn't show them my ID, so a guy wrote me an out of place ticket, because I didn't have my ID. I was five and a half plus a ticket, three, so they

gave me one day of detention and messed up six days – six months ticket free, which would have been three points off of my security. So, yes, I remember that ticket fondly.

Q Now, just one last one I want to get at is the 030. That stands for possession of dangerous contraband. Do you recall that instance?

A 030.

Q One of those.

A I don't know. I don't know I had a ticket for [26] dangerous contraband at one time. That's the reason I was sent to Standish.

Q Okay. And what was the dangerous contraband that was involved with that?

A Allegedly they found some of my paperwork – what do you call it – homemade shank, S-H-A-N-K, a knife.

Q Now, this summary ends at August 5, 1999. Since that time, which is about a year ago, have you had any major misconducts after the last date of this?

A Yes.

Q And what were those?

A 012s, 020s.

Q So those are the threatened behavior and disobeying direct orders?

A Yes.

Q Okay. Now, those – the threatening behavior, major misconducts, about how many have you had within the last year?

A Two, three, I'm guessing.

Q Now, I'm not really familiar with the definition. Is this always something that's directed toward an officer, or can this be towards an inmate also, threatening –

A No, it can all be towards officers. Inmates don't count.

[27] Q Sure.

Now, let's see. Now, when you were charged with the major misconduct of threatening behavior, the one involving Mark Close –

A Yes.

Q – after receiving a ticket, what happens as far as investigation, a hearing, all that, what happens?

A Because I was in general population at the time that this ticket was written, I was placed in what you call temporary segregation, which is the same as punitive detention or the hole, the worst possible place you could be put in any institution. I had to stay in that place until a hearing was had, because I was considered a threat to the institution.

Q And so from the time you went there until – from the time you went into the hole until your hearing, how long was that, how many days?

A I have to see the ticket and stuff. I think it was five days.

Q And would you explain what happens at the hearing.

A The hearing, you go into the hearing. Hearing officer reads the misconduct to you. Any witness statements that – or any information that he has been presented with and pronounces his judgment.

[28] Q And what happened at that hearing?

A At that hearing, Arvid – how do you spell it?

Q I think it's A-R-V-I-D.

A Right.

Q Last name, P-E-R-R-I-N.

A Right.

Q That's correct.

A Right.

Arvid Perrin read the misconduct ticket, made a joke, said that yes, he had smoke coming out his ears and so forth and so on, exaggerating stuff, comments were made, the ticket by the officer, that I had veins bulging out of my neck and all this here. He made a joke in regards to that. And he told me that he didn't find where I made – I didn't say nothing to the officer. He didn't find where I made any threats to the officer, physically or in any kind of way. So he found me guilty of insolence for standing up.

Q And after the hearing was completed, did you appeal that as far as – I think you're allowed to ask for a rehearing; is that correct?

A Yes.

Q Did you ask for your rehearing?

A No.

[29] Q And what was the reason for not?

A Because I have done rehearings and judicial review of major misconducts, maybe ten, twelve tickets. And I'm convinced that that whole system don't work.

Q Okay. So you didn't pursue that? You did not pursue that remedy at this time?

A Not at this time.

Q Now, before we finish here, are there any answers you wish to change that you thought of –

A No.

Q Do you recall anything now that you couldn't think of when I asked the question?

A No.

MR. HIMEBAUGH: That's all I have.

MS. KANAR: Can we take a minute.

MR. HIMEBAUGH: Sure.

MS. KANAR: Okay. Just go off the record for a moment.

(Discussion off record.)

MS. KANAR: I just have one clarification.

EXAMINATION

BY MS. KANAR:

Q When Mr. Himebaugh asked you what was Mr. Close's arm position when he was coming towards you, could [30] you do that gesture again that he was –

A It's hard, because he was walking – if you're walking fast and coming around, he's coming around the corner, and it's like – it's like – like this. and he was making a statement. Both of his arms were moving like this, looking in my direction making a statement.

Q My question, my clarification, I guess, Mr. Himebaugh described your arms as straight out, and they looked bent at the elbow to me.

A No, that was prior.

Q Oh, that was outside?

A He was talking about him standing in the window and making fight stance with his arms like this and palms were like this and his elbows were extended.

When he came through the door, he was more of a – making a gesture in my direction right with his hands, like he was saying something.

Q So when he was outside, his arms really weren't straight out. They were bent at the elbow. And from the elbow down, they were straight out? But the top –

A He was making like a gesture like: What is up?

Q Okay.

A And then when he got in there, that's what he said [31] when we was face to face: What's up? And what's up is commonly used to me: Let's do this, let's fight.

Q Okay. Back to – he was outside. He was making that gesture. But his arms were bent at the elbow, they were not straight out?

A Yes. Like a person go down to rise or whatever, like that.

Q Okay. I'm trying to describe it in words, because we can't put your position in the record. So that's why I'm playing with these words so much, trying to get that accurately.

Was he crouched at all?

A Yes. Crouched like a wrestling position with his hands palms facing up and crouched down and bent at the knees and in a – his palms facing up. His elbow bent and was crouched down like in a wrestling position.

MS. KANAR: Okay. Thank you. That's all I have.

(END OF RECORD)

(Deposition concluded at 11:00 a.m.)

[32] STATE OF MICHIGAN)
) ss:
COUNTY OF INGHAM)

I, Lynne K. Haf, Shorthand Reporter and Notary Public in and for the above county and state, acting in the County of Ionia, do hereby certify that the aforegoing

deposition was taken before me at the time and place hereinbefore set forth.

I further certify that said witness was by me sworn in said cause and the testimony then given was reported by me stenographically and subsequently transcribed and that the aforegoing is a full, true and correct transcript of my original shorthand notes.

IN TESTIMONY WHEREOF, I have set my hand and notarial seal at Lansing, Ingham County, Michigan, this 19th day of July, 2000.

/s/ Lynne K. Haf
Lynne K. Haf (CSR-4545)
Notary Public in and for the
County of Ingham, acting in the
County of Ionia, State of Michigan.
My commission expires: 8/23/02

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SHAKUR MUHAMMAD, (#213302), a/k/a JOHN MEASE,

Plaintiff,

vs.

MARK CLOSE,

Defendant.
_____/

FILE NO. 98 cv 10153 BC
HON. VICTORIA A. ROBERTS
MAG. CHARLES BINDER

DEPOSITION

of ARVID B. PERRIN, taken before M. Jane Allen, Notary Public and Certified Court Reporter, CSR-2724, **at Standish Maximum Facility, 4713 West M-61, Standish, Michigan, on Wednesday, July 12, 2000.** Witness sworn approximately 3:45 P.M.

* * *

[5] adequately documented the hearing, what happened in the hearing, whether I have dealt with all the evidence that was presented and that I've adequately described the reasons for my decision and the basis for those decisions, the evidence relied upon. There's a lot more things than that.

Q Is the rate of – when you find a ticket to be correct, is that called a conviction?

A The ticket may be correct but not necessarily lead to a conviction, or a guilty finding, and the correctness of the ticket may not result in a guilty finding.

Q How could a ticket be correct and not result in a guilty finding?

A Well, if a ticket is correct in the sense that all the facts are true, well, the facts may be true, but they may not result in the prima facie case. They may not address all the elements. They may not fit the definition of the charge, so that's a case where they would not be guilty because what is said is true, but it doesn't make out a charge for what's recognized by department policy.

Q Do you then change the charge if it's another charge?

A Not generally. Usually, I don't. Sometimes, I suppose if there's enough time, and it would depend on the circumstances. I mean, you have to be faced with the circumstance, first of all. There may not be any other [6] charge. There may not be any charge at all. It's a possibility it could be changed. It would have to be reviewed, sent back. A person would be given at least 24-hours notice of the change of charge, opportunity for investigation.

Q So you are not able to find a prisoner guilty of an offense that is not charged on the ticket, then?

A Yes – well, find them guilty of a lesser included, I could do that, certainly. If it was a lesser included, I would be able to, and if the facts made out a different charge rather than the one that was listed, I could send it back. It depends. The process for sending it back for change or amending it would depend on whether, one, I had actually conducted the hearing yet, started taking testimony. Once

I started taking testimony, then, I would have to basically get the prisoner's either agreement to change it at that point or give him notice that I was going to change it, stop the hearing and go on from there, give him 24-hours notice and so forth.

Q Is insolence a lesser included offense than threatening behavior?

A Yes.

Q Have you reduced threatening behavior to insolence before when you have gotten those charges?

A Yes.

[7] Q Why would you make that reduction, typically?

A Well, I wouldn't make it unless the facts that I found did not fit the threatening behavior. If the facts fit threatening behavior, then, I would be compelled to find the person guilty of that charge, but if it does not, then, I have to look and see if there's a lesser included charge that it does fit.

Q We've seen with the witnesses we've talked to today how subjective threatening behavior can be. The witnesses have told us if they feel threatened, they charge threatening behavior, yet, we have a very definite definition in the policy directives. What is the standard that you use for threatening behavior in finding someone guilty?

A Well, it's subjective in the sense of what their perceptions of threatening behavior are, but you're correct, the definition is specific, and I look to see if there is a specific threat, a physical injury or assault, and if there is not a specific threat of physical injury or assault and that

it's just perception of threat and I agree that those actions that I find have occurred intentionally, are those that would be done intentionally to alarm somebody, then, I would reduce that to insolence.

Q So would it have to be a verbal threat to be threatening

* * *

[19] that I don't believe the staff member's version of it. People often in the heat of things might not see everything the way everybody else does that's around them. Sometimes there are staff witnesses that contradict the report, and sometimes, I just don't – if it's a one-on-one situation, I have to rely upon what I think is the logical scenario of what occurred in that instance, and if the facts that come in tend to show that the staff member was not – their version is not logical, then, I would find him not guilty if the prisoner had a much better explanation of what happened.

MS. KANAR: I think I'm finished.

MR. HIMEBAUGH: Okay. I have some more questions, and I would like to refer to this hearing report, so I would ask the reporter to mark this as Exhibit 1 and attach that. I would just note that it's 10 pages in length.

(Deposition Exhibit No. 1 marked for identification.)

EXAMINATION

BY KEVIN HIMEBAUGH:

Q Have you heard of issues come up where an inmate claims that a ticket was written in retaliation for something, whether it be prior misconduct?

A Yes.

[20] Q Now, if an inmate were to make that claim, would that somehow come out either in your report or during the investigation somewhere if they were claiming it?

A Generally, yes. They should be writing their own statements as to what their defense is, and I try to encourage the prisoners to do that. Some of them for their own tactical reasons refuse to make any statements until they get to the hearing, which causes some problems, but at some point along the way, yes, you would say that, or I would write it in my report, prisoner said staff member is lying and retaliating because he filed a grievance or because of something.

Q And I just want to confirm, even though it eventually may not be defensive, he still may be found guilty, but if he raised that, you would still mention that?

A Yes, right.

Q Now, going to this first page, which is your major misconduct hearing report, I notice in that top paragraph, the third sentence, it talks about statements?

A Statements from all these people and Inmate Screws and the resident, so he did write a statement.

Q Now, the question is at the very beginning where the resident stated that Corrections Officer Close, and so on, does that mean he was there?

A He stated that to me.

* * *

[22] some better than others, but I'm very happy with the investigations that are done here.

Q So if an inmate here had a problem, his voice would be heard?

A They are one of the fairest investigations that I have seen.

Q Now, just based on the facts of this, is this something where a different Hearing Officer could have reached a different decision as you?

A More than likely, it could have been, yes. I'm sure that some Hearing Officers would have felt that this was threatening behavior. There is probably some. I just happened to feel if it went over that line, then, there would be no standard at all. It would be whatever subjectively the officer felt, so that's why I look for a specific.

MR. HIMEBAUGH: I have no other questions.

REEXAMINATION

BY WENDY DAVIS KANAR:

Q Just one question. Returning to the subjective nature of the threatening behavior charges and you have to follow the standard definition. Do you consider it – do you ever get threatening behavior charges where the

officer claims to be threatened by relatively innocuous behavior, in your opinion?

[23] A Has it ever happened?

Q Yes, where you felt the officer was either over sensitive or over charging?

A Probably has. I mean, I have been doing this for 18 years. I'm sure there has been occasions when I thought that what was described in the misconduct – however, I wasn't there at the scene, but what is described in the misconduct, the charge might have resulted from over reaction.

Q Is that proper – let me rephrase that. When you've seen these charges, have you ever looked at it and thought that the officer did something improper in over charging, in your opinion, as threatening behavior when it certainly could not have been threatening behavior, an instance like that?

A That's possible, yes. I know, in fact, that I may have felt that, but I don't think I can remember any here, but in some institutions, it was apparent that, yes, they didn't not only overreact, they did it so they could charge with a non bondable, but it was very rare. But it was certain circumstances when I felt that that was the reason they had charged the threatening behavior was to have the non bondable charge.

Q I just want to make one other distinction. I believe you said earlier that if a prisoner's defense is he started [24] it, referring to the officer, that isn't usually a defense; is that correct?

A Yeah, depending on what he started. If he started fighting with him, that wouldn't be a defense, although I can't remember ever having that. But if he started verbally, the prisoner is expected to sticks and stones, and I don't see that he can escalate, or anything like this, or even retaliate and still not violate the rules.

Q Now, is that distinct at all from the situation where the prisoner claims not that he started the incident, but the ticket was written in retaliation, is that the defense if he's claiming the ticket was written in retaliation?

A No, that would go to credibility, I guess, because the officials have discretion on non bondables, whether to write a ticket or not, so they might very well say in retaliation and say "Ordinarily, I would overlook this, but since you did such and such," this may be a thought process, "Since you were not very nice to me yesterday in the chow hall, I'm going to go ahead and write the ticket this time." In a sense, maybe that could be termed and there's progressive discipline retaliation, but if retaliation was raised as a defense saying the prisoner simply lied on the ticket, it would just go to credibility.

MS. KANAR: I have nothing further. I think [25] we're finished, then.

MR. HIMEBAUGH: Thanks.

(Deposition concluded at 4:25 P.M.)

(END OF RECORD)

No. 02-1043

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SHAKUR MUHAMMAD, also known as John E. Mease, Plaintiff-Appellant,	)	
v.	)	ORDER
MARK CLOSE, Correctional Officer, Defendant-Appellee	)	

NOT RECOMMENDED FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situation Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be *prominently* displayed if this decision is reproduced.

Before: MARTIN, Chief Judge, MOORE, Circuit Judge; WISEMAN, District Judge.*

Shakur Muhammad appeals a district court grant of summary judgment for defendant in this civil rights action filed under 42 U.S.C. § 1983. This case has been referred

* The Honorable Thomas A. Wiseman, Jr., United States District Judge for the Middle District of Tennessee, sitting by designation.

to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Muhammad filed his complaint in the district court alleging that the defendant corrections officer falsely charged him with major misconduct threatening behavior in retaliation for prior lawsuits and grievances plaintiff filed against defendant. Plaintiff named defendant in his individual and official capacities and sought compensatory and punitive damages and expungement of the resulting misconduct conviction on a reduced charge of insolence. Defendant moved to dismiss the complaint or for summary judgment, and plaintiff responded in opposition and moved for leave to amend his complaint. The magistrate judge recommended that defendant's motion to dismiss or for summary judgment be denied and that plaintiffs motion to amend his complaint be granted, and defendant filed objections. The district court adopted the magistrate judge's recommendation and denied defendant's motion, and plaintiff filed an amended complaint.

Thereafter, the magistrate judge appointed counsel to represent plaintiff, and defendant moved to dismiss the complaint for failure to exhaust administrative remedies. The magistrate judge recommended that the motion to dismiss be denied, and defendant filed objections. The district court adopted the magistrate judge's recommendation and denied defendant's motion to dismiss.

Following discovery, defendant again moved the district court for summary judgment, plaintiff responded in opposition, and defendant submitted a reply. The magistrate judge recommended that summary judgment

for defendant be granted, and the district court granted plaintiff leave to file pro se objections after counsel declined to do so. The district court adopted the magistrate judge's recommendation and granted summary judgment for defendant. Plaintiff filed a timely notice of appeal pro se. On appeal, plaintiff contends that he established a genuine issue of material fact remaining for trial with respect to whether defendant retaliated against him in violation of the First Amendment. Defendant responds that the district court's judgment was proper.

Upon de novo review, *see Brooks v. Am. Broad. Cos.*, 932 F.2d 495, 500 (6th Cir. 1991), we affirm the judgment of the district court. The, plaintiff seeks punitive and compensatory damages and requests that "the misconduct charge [be] expunged from his file." J.A. at 14. Thus this case falls directly within the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994), which this circuit applied to a prisoner seeking damages and expungement of a disciplinary infraction in *Huey v. Stine*, 230 F.3d 226, 228 (6th Cir. 2000). "In order to grant the plaintiff in this case the relief he seeks, we would have to unwind the judgment of the state agency." *Id.* at 230. Thus *Heck* bars the plaintiff's action under 42 U.S.C. § 1983.

Accordingly, the district court's judgment is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE
COURT

_____

Clerk

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543-0001

Denise J. McNerney
Ph:202-479-3032/Fax: 3204
djmerits@scus.gov

June 9, 2003

Corinne Beckwith
Public Defenders Service
633 Indiana Ave., NW
Washington, D.C. 20004

Re: *02-9065 – Muhammad v. Close*

Dear Ms. Beckwith:

The Court today entered the following order in the above case:

The motion of petitioner for leave to proceed in forma pauperis is granted, and the petition for a writ of certiorari is granted limited to the following Questions: 1. Whether a plaintiff who whishes [sic] to bring a Sec. 1983 suit challenging only the conditions, rather than the fact or duration, of his confinement, must satisfy the favorable termination requirement of *Heck v. Humphrey.* 2. Whether a prison inmate who has been, but is no longer, in administrative segregation may bring a Sec. 1983 suit challenging the conditions of his confinement (i.e. his prior placement in administrative segregation) without first satisfying the favorable termination requirement of *Heck v. Humphrey.* Corinne Beckwith, Esq., of Washington, D.C. is appointed

to serve as counsel for the petitioner in this case."

* * *

Sincerely,

WILLIAM K. SUTER, CLERK

/s/ Denise J. McNerney
Denise J. McNerney
Merits Cases Clerk

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(1681)